

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

RLB,	:	NO. 97-20,907
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
MBU,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated February 18, 2003, in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard April 2, 2003. In his exceptions, Respondent contends the hearing officer erred in failing to award him the dependency exemption for the two minor children, in failing to assess Petitioner with a full time earning capacity, in his finding regarding the cost of health insurance, and in the percentage responsibility for unreimbursed medical expenses. These will be addressed seriatim.

With respect to the dependency exemption, the hearing officer calculated Respondent’s income both with and without the dependency exemptions and found an increase in child support of only \$20.00 per month. He then concluded that the greatest financial benefit to the children would be for Petitioner to continue to claim the children on her tax return and denied Respondent’s request for the exemptions. It appears the tax consequences of awarding the exemptions to Respondent was incorrectly figured by the hearing officer, however. Should Respondent be awarded the exemptions, his taxable income would be reduced to \$15,074.00, resulting in a federal income tax of \$2,261.00. Applying the \$1,200.00 child tax credit would reduce his tax further to \$1,061.00. Since \$3,715.00 was withheld, Respondent would receive a refund of \$2,654.00, providing an additional \$221.00 per month, making his total monthly net income from his employment and the refund, \$2,107.00.

Petitioner, on the other hand, would now, without the exemptions, have a taxable income of \$3,505.00 and owe a federal income tax of \$529.00. Since she had \$266.00 withheld and would also be entitled to an earned income credit of \$4,140.00, her refund would be \$3,877.00, or \$323.00 per month. Petitioner would thus have a monthly net income from employment and the refund of \$1,262.00.<sup>1</sup> The child support is thus recalculated at \$633.54 per month, an increase of \$35.66 per month.

The Court further notes that a simple comparison of the increase of child support to the tax increase experienced by Petitioner is not the only consideration in deciding whether to award Respondent the exemption. The Court believes that the total savings in taxes should also be considered. In the instant case, Respondent experiences an increase in his tax refund of \$1,800.00 and Petitioner experiences a decrease in her refund of \$812.00, thus saving overall approximately \$1,000.00. This savings can be utilized for the benefit of the children and does justify an award of the exemptions to Respondent. The Court will not, however, allow Petitioner to experience a net loss as a result of this award, as such would not be in keeping with the purpose of awarding the exemption to Respondent, which is “increased financial resources that could be utilized for the children’s benefit.” Miller v Miller, 44 A.2d 778 (Pa. Super. 1999). Rather, the Court will increase Petitioner’s support by \$384.00 per year, so that she suffers no net loss.<sup>2</sup> Respondent will nevertheless realize a gain of approximately \$1,000.00 per year,<sup>3</sup> which he can utilize for the children’s benefit.

With respect to assessing Petitioner a full time earning capacity, it appears Petitioner works approximately 24 hours per week, two twelve-hour shifts on the weekends. Respondent seeks to have her assessed a forty-hour per week earning capacity, contending she could pick up two additional eight-hour shifts during the week at her current employment. Petitioner admits that she could do so but indicates that she would then have a child care expense. Respondent offers to

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<sup>1</sup> Although at argument Petitioner indicated loss of the exemptions would result in loss of her eligibility for state income tax forgiveness, thus requiring she pay state income tax, it appears the hearing officer had not considered the forgiveness in calculating her income in the first place, so only the change in federal tax need now be considered.

<sup>2</sup> Since the award increases Petitioner’s tax obligation by \$812.00 but increases her support by only \$428.00, she realizes a loss of \$384.00.

<sup>3</sup> Respondent saves \$1,800.00 in tax, and pays \$428.00 more in support, plus \$384.00 additional support, leaving him

provide childcare. The Court notes that an offer of childcare to avoid a childcare expense is a custody issue and the custodial parent is not required to agree to such an offer in a support context. Thus, considering the potential childcare expense, the Court finds no error in the hearing officer's decision to base the support obligation on Petitioner's actual income, rather than assessing an additional earning capacity.

With respect to the amount of health insurance, it appears an error was indeed made, and that the health insurance premium is \$58.72 bi-weekly, rather than \$53.72 bi-weekly. At \$127.23 per month, Petitioner's obligation for the health insurance is \$47.66 per month and such will be deducted from Respondent's child support obligation.

With respect to the percentage responsibility for medical expenses, it appears a typographical error was made in the Family Court Order as Petitioner was ordered to pay 40% of such and Respondent was ordered to pay 69% of such, rather than 60%. The recalculated incomes with the award of the dependency exemptions requires a different allocation in any event and therefore this exception is deemed moot.

ORDER

AND NOW, this 11<sup>th</sup> day of April, 2003, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. Petitioner shall execute the necessary form to provide Respondent with the dependency exemptions for the two minor children for tax year 2002 and continuing thereafter until modified by further Order of Court.<sup>4</sup> The Family Court Order dated February 18, 2003 is hereby modified to provide for a payment of \$617.88 per month<sup>5</sup> effective December 27, 2002. The parties' responsibility for excess unreimbursed medical expenses is also modified such that Petitioner shall be responsible for 37.46% of such and Respondent shall be responsible for 62.54% of such.

As modified herein, the Order of February 18, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
RB  
Brad Hillman, Esq.  
Dana Jacques, Esq.  
Gary Weber, Esq.

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<sup>4</sup> The Court notes Petitioner has already filed her 2002 federal income tax return and will be required to file an amended return.

<sup>5</sup> The \$633.54 per month based on the parties' incomes plus \$32.00 per month to compensate Petitioner for the loss of the tax refund, less the \$47.66 per month health insurance contribution.